

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.E., by his next friends and
parents, SHELLEY ESQUIVEL and
MARIO ESQUIVEL,
Plaintiff,

v.

Case No.

BILL LEE, et al.,
Defendants.

3:21-cv-00835

VIDEOCONFERENCE DEPOSITION OF
JENNIFER HEMMELGARN

DATE: Friday, July 29, 2022
TIME: 9:33 a.m. CDT/10:33 a.m. EDT
LOCATION: Remote Proceeding
Washington, DC 20005
REPORTED BY: Janel Folsom, Notary Public
JOB NO.: 5335467

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF L.E., by his next friends and
parents, SHELLEY ESQUIVEL and MARIO ESQUIVEL:

SAMUEL M. STRONGIN, ESQUIRE (by videoconference)
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue Northwest
Washington, DC 20001
samuel.strongin@wilmerhale.com
(202) 663-6565

TARA L. BORELLI, ESQUIRE (by videoconference)
Lambda Legal Defense and Education Fund Inc.
730 Peachtree Street Northeast, Suite 640
Atlanta, GA 30318
tborelli@lambdalegal.org
(404) 897-1880

A P P E A R A N C E S (Cont'd)

LUCAS CAMERON-VAUGHN, ESQUIRE

(by videoconference)

American Civil Liberties Union Foundation
of Tennessee

P.O. Box 120160

Nashville, TN 37212

cameron-vaughn@aclu-tn.org

ON BEHALF OF DEFENDANTS GOVERNOR BILL LEE,
COMMISSIONER PENNY SCHWINN, DR. MORRISON, THE
INDIVIDUAL MEMBERS OF TENNESSEE STATE BOARD OF
EDUCATION IN THEIR OFFICIAL CAPACITIES, AND THE
TENNESSEE STATE BOARD OF EDUCATION:

STEPHANIE A. BERGMAYER, ESQUIRE

(by videoconference)

Tennessee Attorney General, Tax Division
315 Deaderick Street, 20th Floor

Nashville, TN 37243

stephanie.bergmeyer@ag.tn.gov

(615) 741-6828

A P P E A R A N C E S (Cont'd)

CLARK L. HILDABRAND, ESQUIRE (by videoconference)

Knox County Law Director's Office

400 Main Street, Suite 612

Knoxville, TN 37902

clark.hildabrand@ag.tn.gov

TRAVIS ROYER, ESQUIRE (by videoconference)

Tennessee Attorney General

167 North Main Street, Suite 800

Memphis, TN 38103

travis.royer@ag.tn.gov

ON BEHALF OF DEFENDANTS KNOX COUNTY BOARD OF EDUCATION
AND ROBERT THOMAS IN HIS OFFICIAL CAPACITY:

JESSICA JERNIGAN-JOHNSON, ESQUIRE

(by videoconference)

Knox County Law Director's Office

400 Main Street, Suite 612

Knoxville, TN 37902

jessica.johnson@knoxcounty.org

(865) 215-2327

A P P E A R A N C E S (Cont'd)

AMANDA L. MORSE, ESQUIRE (by videoconference)

Knox County Law Director's Office

400 Main Street, Suite 612

Knoxville, TN 37902

amanda.morse@knoxcounty.org

(865) 215-2327

DAVID M. SANDERS, ESQUIRE (by videoconference)

Knox County Law Director's Office

400 Main Street, Suite 612

Knoxville, TN 37902

david.sanders@knoxcounty.org

(865) 215-2327

ALSO PRESENT:

Jerry Curran, Tech Concierge (by videoconference)

Brandon C. Townsend, Intern, Tennessee Attorney

General (by videoconference)

I N D E X

EXAMINATION:	PAGE
By Mr. Strongin	10
By Ms. Jernigan-Johnson	128

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Knox County I-171 Policy	41
Exhibit 2	Hemmelgarn E-Mail Re: Trans Athletes	64
Exhibit 3	Mac Pickle E-Mail Re: Trans Athletes	68
Exhibit 4	TSSAA Pre-SB 228 Trans Policy	74
Exhibit 5	SB 228 Language	79
Exhibit 6	Tennessee Code Annotation 49-6-310	80
Exhibit 7	E-Mails Re: Meeting of Title IX Personnel	87
Exhibit 8	KCS RFA Responses	125

(Exhibits retained by counsel.)

P R O C E E D I N G S

THE REPORTER: Good morning. My name is Janel Folsom; I am the reporter assigned by Veritext to take the record of this deposition. We are now on the record at, sorry, 10:33 a.m. on Friday, July 29, 2022.

This is the deposition of Jennifer Hemmelgarn taken in the matter of L.E. by His Next Friends and Parents, Shelley and Mario Esquivel vs. Bill Lee, et al., Case No. 3:21-cv-00835. And this case is filed in the U.S. District Court, Middle District of Tennessee, Nashville Division. We are all participating via a Zoom videoconference.

And I am a notary authorized to take acknowledgments and administer oaths in the Commonwealth of Virginia. Parties agree that I will swear in the witness remotely, outside of her presence.

Additionally, absent an objection on the record before the witness is sworn, all parties and the witness understand and agree that any certified transcript produced from the recording

1 virtually of this proceeding:

- 2 - is intended for all uses permitted
3 under applicable procedural and
4 evidentiary rules and laws in the same
5 manner as a deposition recorded by
6 stenographic means; and
7 - shall constitute written stipulation
8 of such.

9 At this time will all the attorneys on
10 the call please introduce yourself for the record.
11 I'm sorry. One second. And, Samuel, you can go
12 first.

13 MR. STRONGIN: Great, thank you. My
14 name's Samuel Strongin, representing plaintiff L.E.,
15 and I'm with the law firm Wilmer Cutler Pickering Hale
16 and Dorr.

17 MS. BERGMAYER: Good morning, Stephanie
18 Bergmeyer with the attorney general's office. I
19 represent Governor Lee; Commissioner Penny Schwinn;
20 Dr. Morrison; and the individual members of the
21 Tennessee State Board of Education, all in their
22 official capacities; and the Tennessee State Board of

1 Education. And with me in attendance today from the
2 attorney general's office are Clark Hildabrand and
3 Travis Royer. And we also have an intern here today
4 with us, Brandon Townsend.

5 MS. JERNIGAN-JOHNSON: Good morning,
6 everyone. My name is Jessica Jernigan-Johnson. I am
7 with the Knox County Law Director's Office. I
8 represent the Knox County Board of Education and
9 Robert Thomas in his official capacity. I am
10 accompanied today by David Sanders and Amanda Morse.

11 MR. CAMERON-VAUGHN: Good morning, my
12 name is Lucas Cameron-Vaughn, and I'm with the ACLU of
13 Tennessee, and I'm representing L.E., the plaintiff in
14 this matter.

15 THE REPORTER: Okay. If that's
16 everyone, then, Ms. Hemmelgarn, if you could just
17 raise your right hand, I'll swear you in.

18 WHEREUPON,

19 JENNIFER HEMMELGARN,
20 called as a witness, and having been first duly sworn
21 to tell the truth, the whole truth, and nothing but
22 the truth, was examined and testified as follows:

1 THE REPORTER: Okay. You can begin.

2 EXAMINATION

3 BY MR. STRONGIN:

4 Q Thank you. Good morning, Ms. Hemmelgarn.
5 My name is Samuel Strongin. I'm representing
6 plaintiff L.E., from the law firm Wilmer Cutler
7 Pickering Hale and Dorr. How are you doing this
8 morning?

9 A Good morning. I'm good, thank you.

10 Q Great. And can you please just confirm that
11 you can see and hear me?

12 A Yes, I can.

13 Q And I wanted to first take a minute just to
14 say thank you for taking the time for this deposition.
15 I know things are busy for you this time of year with
16 school getting started, so appreciate that.

17 Is it all right if I call you
18 Ms. Hemmelgarn, or is there another honorific you
19 prefer?

20 A Ms. Hemmelgarn is good.

21 Q Great. And could you please tell me who is
22 in the room with you currently?

1 secondary level. That -- that would be the most
2 concise way that I think I could describe it.

3 Q And what role does Knox County Schools play
4 with the Tennessee Secondary School Athletic
5 Association?

6 MS. JERNIGAN-JOHNSON: Object to the
7 form.

8 A TSSAA is a membership organization, so
9 members that elect to participate are governed by the
10 bylaws or rules of TSSAA. Knox County Schools, high
11 schools, each of the 16 traditional high schools are
12 members of TSSAA.

13 Q So is membership at the individual school
14 level, then?

15 A Membership is at the individual school
16 level, yes.

17 Q And is Farragut High School a member of the
18 TSSAA?

19 A Yes.

20 Q Is TSSAA membership a prerequisite to a
21 school having an interscholastic athletic program?

22 MS. JERNIGAN-JOHNSON: Object to the

1 be eligible to participate on the boys' golf team at
2 Farragut High School?

3 MS. JERNIGAN-JOHNSON: Object to the
4 form.

5 A No.

6 MR. STRONGIN: Thank you,
7 Ms. Hemmelgarn. Those are all the questions I have.

8 MS. BERGMEYER: I have no questions.
9 Thank you.

10 MS. JERNIGAN-JOHNSON: I'm sorry,
11 Stephanie. Did you say you do have questions?

12 MS. BERGMEYER: No, I do not.

13 MS. JERNIGAN-JOHNSON: Oh, okay.
14 Sorry. I just have a couple of questions.

15 EXAMINATION

16 BY MS. JERNIGAN-JOHNSON:

17 Q So, Ms. Hemmelgarn, we talked earlier in the
18 day about sports opportunities in Knox County. Do you
19 recall when we discussed that?

20 A Yes.

21 Q And you mentioned football as an example of
22 a sport where both boys and girls can participate on

1 the same team; is that right?

2 A Yes.

3 Q Are you aware of other sports or activities
4 that both boys and girls can participate on the same
5 team?

6 A Yes. There are other non-gender specific
7 sports. Do you want me to list the ones I recall?

8 Q Yes, if you can list --

9 A Okay.

10 Q -- the ones you recall.

11 A I believe that, if I recall correctly,
12 soccer is not -- there is soccer and girls' soccer, so
13 it is not designated boys and -- boys and girls. It's
14 just soccer and girls' soccer. I believe that
15 wrestling is the same and also bowling. If I remember
16 correctly, I don't believe that baseball is designated
17 as boys' baseball, but softball is designated as
18 girls' softball.

19 I would have to consult the TSSAA bylaws,
20 which I can do that, if that's okay.

21 Q Thank you.

22 A Okay. So what I am looking at is the TSSAA

1 bylaws from 2021 to 2022. So that's -- wrestling is
2 listed as wrestling and girls' wrestling, so not boys'
3 wrestling. Bowling, the same. Football is not
4 designated as gender-specific. Baseball is not
5 designated as gender-specific. Soccer is not
6 designated as gender-specific in one season, but there
7 is a girls' soccer as well. There are two activities
8 that are not listed as sports under TSSAA, and that is
9 cheerleading and dance as well.

10 Q So based on your review of the TSSAA
11 handbook, it's your understanding that there are coed
12 sports and activities in Knox County Schools.

13 A Opportunities, yes.

14 Q Okay. And finally, was policy I-171 revised
15 because of the passage of Senate Bill 228 that
16 required us -- that required Knox County to adopt a
17 policy as reflected in that bill?

18 A Yes.

19 MS. JERNIGAN-JOHNSON: That is all the
20 questions I have.

21 MR. STRONGIN: I have no more
22 questions.

1 MS. BERGMEYER: No more questions,
2 thank you.

3 THE REPORTER: Okay. If that is all we
4 have, then do we want to give the witness a chance to
5 read and sign?

6 MS. JERNIGAN-JOHNSON: Do you want to
7 review and sign your transcript?

8 THE WITNESS: Yes.

9 THE REPORTER: Okay. Then we are off
10 the record at 2:06 p.m. Eastern Daylight Time.

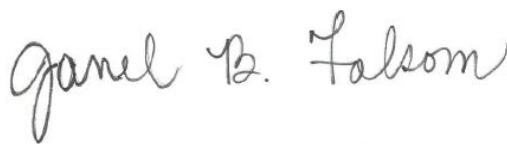
11 (Signature reserved.)

12 (Whereupon, at 1:06 p.m. CDT/2:06 p.m.

13 EDT, the proceeding was concluded.)
14
15
16
17
18
19
20
21
22

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, JANEL FOLSOM, the officer before whom the
3 foregoing proceedings were taken, do hereby certify
4 that any witness(es) in the foregoing proceedings,
5 prior to testifying, were duly sworn; that the
6 proceedings were recorded by me and thereafter reduced
7 to typewriting by a qualified transcriptionist; that
8 said digital audio recording of said proceedings are a
9 true and accurate record to the best of my knowledge,
10 skills, and ability; that I am neither counsel for,
11 related to, nor employed by any of the parties to the
12 action in which this was taken; and, further, that I
13 am not a relative or employee of any counsel or
14 attorney employed by the parties hereto, nor
15 financially or otherwise interested in the outcome of
16 this action.



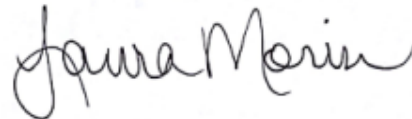
17 JANEL FOLSOM

18 Notary Public in and for the
19 Commonwealth of Virginia
20

21 [X] Review of the transcript was requested.
22

CERTIFICATE OF TRANSCRIBER

I, LAURA MORIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



LAURA MORIN